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No. 85-160

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1985

Muriel C. Hume, Administratrix
of the Estate of Donald E. Hume,

Petitioner,

v.

Durwood Medical Clinic, Inc.;
James H. Black; and Charles Harris,

Respondents.

On Writ of Certiorari to the Court
of Appeals of South Carolina

PETITION

Charles L. Henshaw, Jr., O. Fayrell Furr, Jr., of the Law Offices O. Fayrell Furr, Jr., P.A., 1534 Blanding Street, Columbia, South Carolina 29201, 803-252-4050, for Petitioner.

Robert R. Carpenter, Benjamin A. Johnson of Roddey, Carpenter & White, P.A., P.O. Drawer 551, CSS, Rock Hill, South Carolina 29730, 803-324-4500, for Respondents.

8 pp

QUESTION PRESENTED

Whether the South Carolina trial court violated the due process requirements of the Fourteenth Amendment by exercising long-arm jurisdiction over a North Carolina medical corporation and two North Carolina doctors in a lawsuit arising from interstate medical services provided to a South Carolina resident?

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OPINIONS BELOW

The order of the Supreme Court of South Carolina dismissing certiorari reported at 329 S.E.2d 443 (1985), is annexed to this petition in the Appendix at page A-34.

The opinion of the South Carolina Court of Appeals reported at 318 S.E.2d 119 (S.C. App. 1984) is annexed to this petition in the Appendix at page A-2. The order of Judge Dan F. Laney, Jr., of the Sixteenth Judicial Circuit of South Carolina is not officially reported, but is annexed to this petition in the Appendix at page A-20.

JURISDICTION

The South Carolina Court of Appeals filed opinion in this case on June 11, 1984. The petitioner requested rehearing and her petition was denied by the South Carolina Court of Appeals on July 12,

1984. The petitioner requested writ of certiorari from the South Carolina Supreme Court, and the writ was granted on November 14, 1984. By order filed May 1, 1985, the South Carolina Supreme Court dismissed certiorari as improvidently granted.

The jurisdiction of the Supreme Court of the United States is invoked under 28 U.S.C. § 1257(3) on grounds that final judgment has been rendered by the highest court of South Carolina in a case in which these respondents have contested personal jurisdiction pursuant to their due process rights under the Fourteenth Amendment.

PROVISIONS OF LAW

The constitutional provisions, treaties, statutes, ordinances, and regulations which the case involves include the following:

U.S. CONST. amend. XIV:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

S.C. CODE ANN. § 36-2-803 (1976):

(1) A court may exercise personal jurisdiction over a person who acts directly or by an agent as to a cause of action arising from the person's

(a) transacting any business in this State;

(b) contracting to supply services or things in this State;

(c) commission of a tortious act in whole or in part in this State;

(d) causing tortious injury or death in this State by an act or omission outside this State if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this State; or

(e) having an interest in, using, or possessing real property in this State; or

(f) contracting to insure any person, property or risk located within this State at the time of contracting; or

(g) entry into a contract to be performed in whole or in part by either party in this State; or

(h) production, manufacture, or

distribution of goods with the reasonable expectation that those goods are to be used or consumed in this State and are so used or consumed.

(2) When jurisdiction over a person is based solely upon this section, only a cause of action arising from acts enumerated in this section may be asserted against him, and such action, if brought in this State, shall not be subject to the provisions of 15-7-100(3).

STATEMENT OF THE CASE

This is a medical malpractice action brought by the administratrix of the estate of Donald E. Hume against a Charlotte, North Carolina, corporation known as the Durwood Medical Clinic and two of its medical specialists, James H. Black and Charles Harris. Harris, a cardiologist, and Black, a nephrologist, medically treated Hume for several years until his death at his South Carolina home on February 25, 1978.

Less than one percent of Durwood Medical Clinic's patients were South Carolina residents. The clinic did not solicit business in South Carolina, although it carried out billing by mail in South Carolina. None of the clinic's staff physicians were licensed to practice medicine in South Carolina, and neither the clinic nor the doctors owned

property in South Carolina.

Black and Harris knew that Hume was from South Carolina when they began medical treatment. They collaborated with Dr. Harold P. Hope, a South Carolina doctor who referred Hume to the Durwood Medical Clinic. The North Carolina doctors advised both Hope and the patient on care that could be carried out in Hume's home in addition to his treatment in North Carolina. Follow-up care by the clinic and its doctors included attempts by telephone and mail to give Hume medical instructions at his home.

Harris, Black and the Durwood Medical Clinic, Inc., were served summons and complaints pursuant to the South Carolina long-arm statute, S.C. CODE ANN. § 36-2-803 (1976). Also sued as a joint tortfeasor was Dr. Hope, Hume's South Carolina physician.

The respondents jointly demurred and

moved to dismiss for lack of personal jurisdiction. They also appeared specially to contest jurisdiction. The trial judge overruled the demurrer and denied the motion to dismiss after the following holding, "(T)his Court. . . finds the presence of those minimal contacts necessary to constitutionally subject these defendants to the reach of South Carolina's jurisdiction. . . . It does not appear that requiring these defendants to defend in South Carolina will be unfair, cause undue hardship, or otherwise offend traditional notions of fair play and substantial justice." (A-28).

The respondents appealed and the South Carolina Court of Appeals reversed with the following ruling: "We do not agree . . . that the trial court's exercise of jurisdiction under the facts of this case

is consonant with due process. The test of 'minimal contacts' announced in International Shoe Co. v. State of Washington, 326 U.S. 310 (1945), requires that this State's exercise of jurisdiction not offend traditional notions of fair play and substantial justice.

"In determining what is meant by 'traditional notions of fair play and substantial justice,' our courts have established three considerations: (1) the duration of the activity of the nonresident in this State; (2) the character and circumstances of the commission of the nonresident's acts; and (3) the inconvenience resulting to the parties by conferring or refusing to confer jurisdiction over the nonresident. . . . In addition, the courts often look to the interests of the State in exercising its jurisdiction over

nonresidents. . . .

"Cases involving medical services are quite different from those involving other commercial activity. . . .

"South Carolina's interest in providing her citizens with a convenient forum for the vindication of torts imposed at the hands of nonresidents must be balanced by its countervailing interest of insuring that its residents receive adequate medical services to meet their needs wherever they may be required to go to receive it. . . .

"We do not glean from the conduct of the appellants an intent on their part to purposely avail themselves of the privilege of providing medical services to South Carolina residents on a systematic basis. . . . By providing services to Hume, the appellants were merely fulfilling their professional

responsibilities to provide medical services to a patient in need, and should not by so doing automatically subject themselves to the jurisdiction of the courts of this State.

"Considering the tenuous character of the relationship between the appellants and South Carolina, in light of this State's interest in providing service of process over nonresidents to its injured citizens, in tandem with the chilling effect that the exercise of jurisdiction over the appellants could have on the availability of medical services in South Carolina, we conclude that the assertion of personal jurisdiction over the appellants would be unreasonable under the circumstances of this case." (A-15 to A-19).

The petitioner's request for rehearing by the South Carolina Court of Appeals on the issue of personal jurisdiction was

denied. Application by the petitioner to the South Carolina Supreme Court for certiorari was granted then dismissed as "improvidently granted." (A-34 to A-35).

ARGUMENT

This case presents the question of what contacts are necessary for a forum to impose personal jurisdiction over non-resident defendants who provide personal services across state lines. The South Carolina Court of Appeals by its decision in this case holds that due process analysis for medical services is "quite different" from that "involving other commercial activity." Although the issue has been presented numerous times to lower courts through medical malpractice cases,* no decision has been forthcoming

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*See Wolf v. Richmond County Hospital Authority, 745 F.2d 904 (4th Cir. 1984); Wright v. Yackley, 459 F.2d 287 (9th Cir.

from the Supreme Court to suggest traditional notions of fairness and substantial justice required by International Shoe Co. v. State of Washington are different for haling persons before a foreign tribunal because they provide personal services in interstate commerce rather than tangible commodities.

This Court should settle the question of whether defendants providing personal

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1972); Lemke v. St. Margaret Hospital, 552 F. Supp. 833 (N.D. Ill. 1982); Chancellor v. Lawrence, 501 F. Supp. 997 (N.D. Ill. 1980); Glover v. Wagner, 462 F. Supp. 308 (D. Neb. 1978); Kurtz v. Draur, 434 F. Supp. 959 (E.D. Pa. 1977); Soares v. Roberts, 417 F. Supp. 304 (D.R.I. 1976); Markham v. Gray, 393 F. Supp. 163 (W.D.N.Y. 1975); Gelineau v. New York University Hospital, 375 F. Supp. 661 (D.N.J. 1974); McAndrew v. Burnett, 374 F. Supp. 461 (M.D. Pa. 1974); Sperandio v. Clymer, 581 S.W.2d 377 (Mo. 1979); Kailieha v. Hayes, 56 Haw. 306, 536 P.2d 568 (1975); Tarango v. Pastrana, 94 N.M. 727, 616 P.2d 440 (N.M. App. 1980); Woodward v. Keenan, 88 Mich. App. 791, 279 N.W.2d 317 (1979).

services are to be treated differently for jurisdictional purposes than defendants engaged in other forms of interstate commerce.

Like other modern commercial transactions, medical services have not been isolated from the technological progress in communications and transportation that have increased the flow of commerce between states. Medical services have been regionalized so that specialists practicing in regional medical centers undertake the care of patients from all parts of the country, rather than just their immediate localities. See S. JONAS, HEALTH CARE DELIVERY IN THE UNITED STATES ix (1977). Technological advancements in communications and transportation no longer make long distance an impediment to continuation of the physician-patient relationship. A course of treatment for

the patient can be communicated in an instant to the patient's local physician hundreds of miles away, and in a matter of hours on the advice of the physician at the regional center, the patient can be at a center in another state for a physical examination.

Ideals of the medical profession in offering regionalized medical care exist by the commercial advantage to be attained by having a centralized location from which to treat a large volume of patients who live in areas other than the immediate locality. There is no justification for establishing different standards for in personam jurisdiction for medical services than for other forms of interstate commerce.

This Court should also resolve differences between jurisdictions as to the factors to be reviewed when deciding

whether a forum has jurisdiction over a non-resident defendant in a lawsuit arising from personal services. The decision of the South Carolina Court of Appeals is in conflict with the decision of the Ninth Circuit Court of Appeals in Cubbage v. Merchant, 744 F.2d 665 (9th Cir. 1984), cert. denied, 105 S.Ct. 1359, and the West Virginia Supreme Court of Appeals in S.R. v. City of Fairmont, 280 S.E.2d 712 (W.Va. 1981).

In Cubbage v. Merchant, Arizona doctors who did not have continuous nor systematic contacts with California were haled before a California court for alleged medical malpractice in treating a California resident. The Ninth Circuit specifically declined to distinguish personal services from other types of commercial activity, holding, "We find no justifiable difference between this case and those cases involving voluntary,

interstate economic activity, . . . directed at [another state] in order to benefit from effects sought [there]." 744 F.2d at 669. The South Carolina Court of Appeals holding that the nature of the interstate activity is a jurisdictional factor directly contradicts the holding of Cubbage.

The Ninth Circuit found support for California jurisdiction largely on the basis of the Arizona defendant's proximity to the forum state. Although the defendants in Cubbage had relevant contacts with California by listing with a California welfare agency and California telephone directory and advertising, they never treated the plaintiff in the forum state, as was done here by consultation with Hume's South Carolina physician, telephone conferences and mailings. The Ninth Circuit

concluded contrary to the South Carolina Court of Appeals that a defendant's forum activities are enhanced by the plaintiff's residence when that residence is the focus of the defendant's activities out of which the suit arose. 744 F.2d at 670.

S.R. v. City of Fairmont involved a medical malpractice lawsuit against a Pennsylvania clinic and a West Virginia hospital. Unlike the South Carolina Court of Appeals, the West Virginia court focused on the dilemma facing a plaintiff who has a cause of action against both a defendant within the plaintiff's forum and a non-resident defendant. The court observed, "The suit in West Virginia without [Pennsylvania defendant] Infertility Services as a party defendant enables [West Virginia defendant] Fairmont General Hospital to cast the entire responsibility for plaintiff's

injuries on Infertility Services. On the other hand, if the plaintiff sues Infertility Services in Pittsburgh, she will not be able to join Fairmont General Hospital since it does no business in Pennsylvania. Consequently, Infertility Services could argue that the subsequent renal failure arising from the septic abortion was a result of the misdiagnosis of the absent party in the Pittsburgh litigation --- the Fairmont General Hospital --- and, thereby, shift the major blame to it." 280 S.E.2d at 716.

The South Carolina Court of Appeals said it was not aware of any burden on the petitioner to prosecute her action in North Carolina. S.R. v. City of Fairmont pointed out that in cases such as this the plaintiff's interest in obtaining convenient and effective relief is not adequately protected by her ability to

choose the forum. 280 S.E.2d at 717-18. Manifest injustice results to a plaintiff who is forced to bifurcate her actions between defendants of different states even though the conduct of all defendants is intertwined. The West Virginia Supreme Court of Appeals and the South Carolina Court of Appeals have inconsistent views on whether this factor should subject non-resident defendants to long-arm jurisdiction.

Another factor utilized by the West Virginia Supreme Court of Appeals in S.R. v. City of Fairmont was the geographic distance involved. Noting that the distance between the forum and the Pennsylvania defendant's location was less than 100 miles, the court said the distance would not impose "too severe a travel burden" on the Pennsylvania defendant. 280 S.E.2d at 712. The distance between the forum in this case

and Charlotte, North Carolina, is also less than 100 miles, but geographical distance was not considered a factor by the South Carolina Court of Appeals in determining traditional notions of fair play and substantial justice.

Finally, this Court should review the opinion of the South Carolina Court of Appeals to correct misapplication of the due process standards for in personam jurisdiction established in McGee v. International Life Ins. Co., 355 U.S. 220 (1957); Hanson v. Denckla, 357 U.S. 235 (1958); World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980); and Shaffer v. Heitner, 433 U.S. 186 (1977).

This controversy was related to and arose out of the defendants' contact with the forum. See Shaffer v. Heitner, 433 U.S. at 204. The respondents collaborated with Hume's local physician

on a course of medical treatment to be carried out in South Carolina. By letter and telephone they prescribed treatment to be carried out in Hume's home. The respondents' contact with the forum does not rest upon the unilaterial activity of the petitioner's husband in maintaining the physician-patient relationship. See Kulko v. California Superior Court, 436 U.S. 84 (1978); Hanson v. Denckla, 357 U.S. 235 (1958).

These respondents have availed themselves of the privileges and benefits of South Carolina law. See World-Wide Volkswagen Corp. v. Woodson, 444 U.S. at 297. They accepted referrals from Hume's physician and other South Carolina physicians and treated a number of South Carolina residents. They carried out billing in South Carolina and, therefore, had the benefit of South Carolina's laws to secure the obligations owed them.

This case arose from efforts by these respondents to directly and indirectly serve a market for their service.

South Carolina has a manifest interest in providing effective means of redress for its residents when they are injured by their treating physicians. The state has prescribed standards of conduct in regard to the medical care of its residents by its laws of negligence. See King v. Williams, 276 S.C. 478, 279 S.E.2d 618 (1981). There was no evidence before the South Carolina Court of Appeals that subjecting respondents to the jurisdiction of South Carolina courts would produce a chilling effect on respondents in treating South Carolina patients. The respondents made no showing that they would not treat South Carolina patients for fear of being haled before a South Carolina court. The

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Muriel C. Hume, Administratrix of the Estate of Donald E. Hume, . Respondent,

v.

Durwood Medical Clinic, Incorporated; James H. Black, M.D.; Charles Harris, M.D.; and Harold P. Hope, M.D., of Which Durwood Medical Clinic, Incorporated; James H. Black, M.D.; and Charles Harris, M.D. are, ... Appellants.

Appeal From Union County
Dan F. Laney, Jr., Judge

Opinion No. 0196
Heard April 17, 1984
Filed June 11, 1984

REVERSED

Robert R. Carpenter and Benjamin A. Johnson, of Roddey, Carpenter & White, of Rock Hill, for appellants.

O. Fayrell Furr, Jr. and Charles L. Henshaw, Jr., both of Columbia, and J. Alan Bass, of Myrtle Beach, for respondent.

Cureton, J.: This is a medical malpractice action brought by the administratrix of a Union County South

Carolina decedent against a South Carolina physician, a North Carolina corporation doing business as a medical clinic and two of its staff physicians. The North Carolina defendants filed a demurrer and a motion to dismiss the administratrix's complaint for lack of personal jurisdiction over them. They also appeared specially to contest jurisdiction. The trial judge overruled the demurrer and denied the motion to dismiss. This appeal followed. We reverse.

Respondent's decedent, Donald Hume, was treated by Harold Hope, a Union County physician. Hope, who does not contest jurisdiction, referred Hume to the Durwood Clinic located in Charlotte, North Carolina. There Hume was treated by appellants Black (a nephrologist) and Harris (a cardiologist) over a period of years. On February 22, 1978, Harris saw

Hume in his Charlotte office. On February 25, 1978, Hume died of a heart attack at his Union County home. Hume's administratrix brought this action in Union County, alleging that the doctors and clinic were negligent in rendering medical care to her decedent.

Depositions relating solely to jurisdiction were taken of Doctors Black and Harris and the clinic's business manager, Davis. The administratrix relied exclusively upon the depositions to demonstrate to the trial court sufficient facts to support its jurisdiction. The depositions revealed that the appellant physicians had few general contacts with South Carolina. The appellant physicians were not licensed to practice in South Carolina, none have owned property in South Carolina, and none have maintained bank

accounts in South Carolina. The appellant physicians have not hospitalized patients in South Carolina, nor have they had hospital privileges in South Carolina. They have not paid taxes in South Carolina, they have not solicited patients from South Carolina, and they have not written prescriptions to be filled by South Carolina pharmacists.

The depositions reflect, however, that the appellant physicians knew that Hume was from South Carolina; that they collaborated with Dr. Hope relative to Hume's treatment by advising Hope and furnishing him with medical records; that appellant Harris wrote a letter to Hume in South Carolina furnishing medical advice; that they practice medicine in close proximity to South Carolina; that they have treated a number of South Carolina residents, but these residents

probably account for less than one (1%) percent of their patient load; that they have carried out billing by mail in South Carolina; and that they knew their advice would be carried out in South Carolina.

As to the appellant Clinic, its manager testified that he did not know how many of the Clinic's patients were from South Carolina, but the Clinic does have a number of patients from South Carolina. However, the Clinic does not solicit business in South Carolina and none of its staff physicians are licensed to practice medicine in South Carolina. The Clinic bills South Carolina patients by mail. Finally, the Clinic owns no property in South Carolina.

The trial judge found that the administratrix's pleadings and proof brought the conduct of the North Carolina doctors and clinic within the scope of

Section 36-2-803(1)(c) which provides:

> (1) A court may exercise personal jurisdiction over a person who acts directly or by an agent as to the cause of action arising from the person's
>
> . . . .
>
> (c) commission of a tortious act in whole or in part in this State.

The trial court also found that the activities of the appellants constituted sufficient minimal contacts with South Carolina so that the exercise of personal jurisdiction over them would not offend due process and would conform to traditional notions of fair play and substantial justice.

Appellants first argue that the trial court committed reversible error in overruling their demurrer because the complaint fails to allege conduct sufficient to invoke personal jurisdiction under Code Section 36-2-803.

We disagree. The generally recognized rule is that in a court of general jurisdiction, it is ordinarily unnecessary for the plaintiff to allege affirmatively the jurisdiction of the court. 61A Am. Jur.2d Pleading Section 70 (1981). To sustain a demurrer for lack of jurisdiction, the proof of want of jurisdiction must appear on the face of the complaint. Pollock v. Carolina Interstate Building & Loan Association, 48 S.C. 65, 25 S.E. 977 (1896).

Appellants cite the case of Jurko v. Jobs Europe Agency, 43 Ohio App.2d 79, 334 N.E.2d 478 (1975) and 61A Am. Jur.2d Pleading Section 70 (1981) for the proposition that one seeking to invoke jurisdiction under the long-arm statute must recite facts in his complaint which support jurisdiction under the statute. We do not read these authorities to so hold. Jurko deals with a motion to

dismiss for lack of personal jurisdiction over a nonresident. The court opined that since the complaint did not allege the requisite jurisdictional facts, the plaintiff's neglect in electing to stand on the complaint without supporting it permitted the trial court to dismiss the action. Likewise, 61A Am. Jur.2d Pleading Section 70 is equally inapposite. The section states, inter alia:

> Where an issue of long-arm jurisdiction may be anticipated, good pleading dictates that the Plaintiff recognize that fact at the outset and deal with that issue in his complaint. [emphasis added].

Neither Jurko nor the American Jurisprudence section stands for the proposition that jurisdictional facts must be pleaded in a court of unlimited jurisdiction to invoke jurisdiction under the long-arm statute. Even if we were to

assume that the administratrix was required to allege jurisdictional facts in this case, we would nonetheless hold that the complaint is sufficient to withstand a demurrer.

The appellants next argue that the trial judge committed error in finding as a fact that their conduct constituted the commission of a "tortious act in whole or in part in this State." They further argue that even if their conduct falls within the long-arm statute, they have not had the requisite minimal contacts with South Carolina to subject them to the jurisdiction of a South Carolina court.

The determination of whether the trial court had personal jurisdiction over the nonresident physicians and clinic depends on two factors: whether the nonresidents' conduct amounted to the

commission of a tortious act within this State as contemplated by the long-arm statute, and whether the trial court's exercise of personal jurisdiction in these particular circumstances comports with the constitutional requirements of due process of law. Cozi Investments v. Schneider, 272 S.C. 354, 252 S.E.2d 116 (1979).

In Parker v. Williams & Madjanik, Inc., 270 S.C. 570, 243 S.E.2d 451, 454 (1978), our Supreme Court, in analyzing Code Section 36-2-803(1)(c) stated that

> It is generally held that a provision such as 36-3-803(1)(c), predicating jurisdiction on the commission of a tort "in whole or in part" in this State, is applicable where in-state injurious consequences resulted from out-of-state wrongful acts or omissions. [citation omitted].
>
> As pointed out by the trial judge: "Generally, the place of the wrong is determined where the last event necessary to make an actor liable for an

> alleged tort takes place, or as otherwise stated, the place where the injury is suffered rather than the place where the act which caused the injury was committed." 86 C.J.S. Torts Section 25.

In Parker, a nonresident architect designed a building which he knew was to be constructed on Hilton Head Island, South Carolina. The building allegedly collapsed from negligent design, causing the intestate's death. The court held that the tortious act occurred in South Carolina where the injury was suffered.

We recognize, however, that there is a very substantial line of cases from other jurisdictions that have rejected the view that the tortious rendition of medical services out of the forum state is a portable tort which can be deemed to have been committed wherever the consequences foreseeably were felt. Wright v. Yackley, 459 F.2d 287 (9th Cir. 1972); Chancellor v. Lawrence, 501 F.Supp 997

(N.D. Ill. 1980); Glover v. Wagner, 462 F. Supp. 308 (D. Neb. 1978); Kurtz v. Draur, 434 F. Supp. 958 (E.D. Pa. 1977); Soares v. Roberts, 417 F. Supp. 304 (D.R.I. 1976); Markham v. Gray, 393 F. Supp. 163 (W.D.N.Y. 1975); Gelineau v. New York University Hospital, 375 F. Supp. 661 (D.N.J. 1974); McAndrew v. Burnett, 374 F. Supp. 460 (M.D. Pa. 1974); Kailieha v. Hayes, 56 Hawaii 306, 536 P.2d 568 (1975); Woodward v. Keenan, 88 Mich. App. 791, 279 N.W.2d 317 (1979).

The bellwether case of Wright v. Yackley, supra, established a distinction between a situation where one ventures into a foreign state, receives medical treatment, returns to his home state and suffers injurious consequences, and a case where the nonresident physician diagnoses and treats a patient by mail. Another case, S.R. v. City of Fairmont,

280 S.E.2d 712 (W. Va. 1981) draws a distinction between those cases where nothing is done in the forum state and those involving the breach of the continuing duty of a physician to "provide follow-up treatment for his patient in the forum state." The latter cases would permit the invoking of jurisdiction over the nonresident physician if he engaged in a course of treatment by mail or his conduct involved a breach of a duty to provide follow-up care in the forum state.

Here there were allegations in the complaint and some evidence to support those allegations that the North Carolina doctors and clinic engaged in a course of treatment of Mr. Hume in their offices in North Carolina, and to satisfy their obligation to provide follow-up care to Hume, attempted by mail and telephone to provide <u>some</u> treatment to him in South

Carolina. We therefore hold that the administratrix has shown by the barest of facts that appellants' conduct falls within the requirements of our long-arm statute.

We do not agree, however, that the trial court's exercise of jurisdiction under the facts of this case is consonant with due process. The test of "minimal contacts" announced in International Shoe Co. v. State of Washington, 326 U.S. 310 (1945), requires that this State's exercise of jurisdiction not offend traditional notions of fair play and substantial justice.

In determining what is meant by "traditional notions of fair play and substantial justice," our courts have established three considerations: (1) the duration of the activity of the nonresident in this State; (2) the

character and circumstances of the commission of the nonresident's acts; and (3) the inconvenience resulting to the parties by conferring or refusing to confer jurisdiction over the nonresident. Boney v. Trans-State Dredging Co, 237 S.C. 54, 115 S.E.2d 508 (1960). In addition, the courts often look to the interests of the State in exercising its jurisdiction over nonresidents. Parker v. Williams and Madjanik, Inc., supra.

Cases involving medical services are quite different from those involving other commercial activity. This view is accurately reflected in Gelineau, supra:

> Unlike a case involving voluntary interstate of international economic activity . . . the residence of a recipient of personal services rendered elsewhere is irrelevant and totally incidental to the benefits provided by the defendant at his own location. It is clear that when a patient travels to receive professional services without having been solicited .

> . . then the client, who originally traveled to seek services apparently not available at home, ought to expect that he will have to travel again if he thereafter complains that the services sought by him in the foreign jurisdiction were there rendered improperly. [emphasis added].

Accord, Soares v. Roberts, supra; Woodward v. Keenan, supra; Lemke v. St. Margaret Hospital, 552 F. Supp. 833 (N.D. Ill. 1982).

South Carolina's interest in providing her citizens with a convenient forum for the vindication of torts imposed at the hands of nonresidents must be balanced by its countervailing interest of insuring that its residents receive adequate medical services to meet their needs wherever they may be required to go to receive it. Wright v. Yackley, supra.

We do not glean from the conduct of the appellants an intent on their part to purposely avail themselves of the

privilege of providing medical services to South Carolina residents on a systematic basis. Wright v. Yackley, supra; Soares v. Roberts, supra; Woodward v. Keenan, supra. By providing services to Hume, the appellants were merely fulfilling their professional responsibilities to provide medical services to a patient in need, and should not by so doing automatically subject themselves to the jurisdiction of the courts of this State.

Considering the tenuous character of the relationship between the appellants and South Carolina, in light of this State's interest in providing service of process over nonresidents to its injured citizens, in tandem with the chilling effect that the exercise of jurisdiction over the appellants could have on the availability of medical services in South

Carolina, we conclude that the assertion of personal jurisdiction over the appellants would be unreasonable under the circumstances of this case.

Finally we have not been made aware of any burden that would be imposed upon the administratrix by requiring her to prosecute her action in North Carolina.

Accordingly, the order of the trial court is

REVERSED.

SHAW and BELL, JJ., concur.

STATE OF SOUTH CAROLINA	)	IN THE COURT
	)	OF COMMON
COUNTY OF UNION	)	PLEAS
MURIEL C. HUME, Administratrix of the Estate of Donald E. Hume Deceased,	)	
Plaintiff,	)	
vs.	)	O R D E R
	)	81-CP-44-43
DURWOOD MEDICAL CLINIC, INC., JAMES H. BLACK, M.D., CHARLES HARRIS, M.D., and HAROLD P. HOPE, M.D.,	)	
Defendants.	)	

This is a medical malpractice action brought by the administratrix of a South Carolina decedent against a South Carolina physician, two North Carolina physicians, and a North Carolina corporation doing business as a medical clinic. The North Carolina defendants have specially appeared to contest jurisdiction and have jointly filed a demurrer and a motion for dismissal on

the ground that they do not fall within the personal jurisdiction of the South Carolina courts. This matter was heard November 16, 1981. Plaintiff was represented by Charles L. Henshaw, Jr. of the Law Offices of O. Fayrell Furr, Jr., Columbia, S.C.; defendant was represented by Robert R. Carpenter of the firm of Roddey, Carpenter & White, Rock Hill, S.C. Defendants' demurrer and motion to dismiss are hereby denied.

Jurisdictional questions involving nonresident defendants necessarily dictate a bifurcated determination: (1) whether the acts allegedly done by the defendants bring them within the scope of the Long-Arm Statute, South Carolina Code Ann. § 36-2-803 (1976); and (2) whether or not there are minimum contacts in this state to satisfy traditional notions of fair play and substantial justice. Cozi

Investments v. Schneider, 272 S.C. 354, 252 S.E.2d 116 (1979); Jacobs v. Association of Independent Colleges and Schools, 265 S.C. 459, 219 S.E.2d 837 (1975).

South Carolina's Long-Arm Statute has been construed on several occasions as a grant of jurisdiction as broad as constitutionally permissible. Hardy v. Pioneer Parachute Co., 531 F.2d 193 (4th Cir. 1976); Foremost Pipeline Construction Co. v. Ford Motor Co., 420 F. Supp. 647 (D.S.C. 1976); and Anthony v. Drovers National Bank, 405 F. Supp. 626 (D.S.C. 1975) all cited with approval in Cozi Investments. The parameters of our Long-Arm Statute are, thus, restricted only by the due process limitations.

In passing upon a demurrer, the court is limited to a consideration of the four corners of the complaint. Dagle

Construction Co. v. Cerrati, 274 S.C. 122, 262 S.E.2d 12 (1980). This Court finds that plaintiff's Complaint satisfies the requirements necessary to invoke personal jurisdiction in South Carolina courts because it sets forth allegations sufficient to show that these defendants did engage in activities outlined in our Long-Arm Statute.

Allegations of the complaint reflecting that Mr. Hume's death and preceding pain and suffering occurred in South Carolina as a result of medical mistreatment by both South Carolina and non-resident physicians brings the pleading within the scope of the Long-Arm Statute providing that persons who commit a "tortious act in whole or in part in this State" are subject to the jurisdiction of its courts. S.C. Code Ann. § 36-2-803(1) (1976).

Our Supreme Court has elaborated on the scope of this section stating that:

> It is generally held that a provision such as Section 36-2-803(1)(c), predicting jurisdiction on the commission of a tort "in whole or in part" in the State, is applicable where in-state injurious acts or omissions. [Citations omitted]. We accordingly hold that the commission of a "tortious act in whole or in part in this State" applies to in-state injuries resulting from out-of-state acts or omissions. [Emphasis ours]. Parker v. Williams & Madjanik, Inc., 270 S.C. 570 at 574, 243 S.E.2d 451 (1978).

Mr. Hume's death occurred in South Carolina allegedly resulting, in part, from the acts or omissions of the North Carolina defendants in North Carolina. In keeping with the broad interpretation of Section 36-2-803(1), this Court finds that the defendants' demurrer must be overruled.

When non-resident defendants fall within the scope of Section 36-2-803, it is necessary to determine whether the

exercise of jurisdiction would offend the due process requirements of fair play and substantial justice. See Parker, Cozi Investments, and International Shoe Co. v. State of Washington, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945). The South Carolina Supreme Court has affirmed four considerations that should be used in determining whether a nonresident has sufficient contacts in this state to confer jurisdiction within the bounds of due process. Parker, at 576. These considerations are: (1) the duration of the nonresident's activity, (2) the character and circumstances of the commission of the nonresident's acts, (3) the conveniences of the parties in conferring or refusing to confer jurisdiction over the nonresident, and (4) the interest of the state in exercising jurisdiction. A similar

analysis was used by the United States Supreme Court in World-Wide Volkswagen v. Woodson, 444 U.S. 286, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980).

Depositions were taken of the two North Carolina physicians and the manager of the North Carolina clinic limited solely to discovery of facts related to the jurisdictional issue now before this Court. These depositions were filed with the Court and are properly considered for the purposes of defendants' motion to dismiss.

The depositions reflect that the North Carolina defendants knew that Mr. Hume was from South Carolina, that they collaborated in his treatment with the South Carolina physician that referred him, that they practice medicine in close proximity to South Carolina and have treated a number of South Carolina residents, and that they carried out

billing in South Carolina. The North Carolina defendants advised care to the South Carolina physicians and to the patient himself that could be carried out in the plaintiff's home in addition to his treatment in North Carolina. The treatment allegedly culminated in his pain, suffering and subsequent death.

In weighing the conveniences of the parties, it is reasonable to conclude that the witnesses needed in this case would be located in South Carolina and in Charlotte, N.C., a city located in close proximity to the South Carolina line.

Perhaps the most crucial factor in this case lies in the interest of this state in protecting its citizens from negligent medical care that may occur in metropolitan areas bordering on this state. It is not unreasonable to hold doctors from Charlotte who have a number

of South Carolina patients accountable in South Carolina for negligent treatment of those patients.

In conclusion, this Court finds that Section 36-2-803, confers jurisdiction over these defendants, and further finds the presence of those minimal contacts necessary to constitutionally subject these defendants to the reach of South Carolina's jurisdiction, especially in light of our Supreme Court's recent opinion of McComb v. Tilburon Aircraft, Inc., ___S.C.___, 281 S.E.2d 482 (1981); Opinion No. 21550, Smith's Advance Sheets, filed 8-18-81. It does not appear that requiring these defendants to defend in South Carolina will be unfair, cause undue hardship, or otherwise offend traditional notions of fair play and substantial justice. Accordingly, defendants' demurrer and motion to dismiss are overruled.

IT IS SO ORDERED.

s/
Dan F. Laney, Jr.,
Presiding Judge
SixteenthJudicial Circuit

December 30, 1981

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Honorable Dan F. Laney, Jr., Judge

Opinion No. 0196

Filed June 11, 1984

Muriel C. Hume, Administratrix of the Estate of Donald E. Hume, Deceased,

Respondent,

v.

Durwood Medical Clinic, Incorporated; James H. Black, M.D.; Charles Harris, M.D.; and Harold P. Hope, M.D.,

Appellants.

ORDER DENYING PETITION FOR REHEARING

Having considered the Petition of the Respondent for a rehearing in this case, and finding no merit to such petition,

IT IS ORDERED that the petition be denied.

s/Curtis G. Shaw, J.

s/Randall T. Bell , J.

s/Jasper M. Cureton , J.

Columbia, South Carolina

July 12, 1984

THE SUPREME COURT
OF SOUTH CAROLINA

Muriel C. Hume, Administratrix of the Estate of Donald E. Hume, Deceased,

Respondent-Petitioner,

v.

Durwood Medical Clinic, Incorporated; James H. Black, M.D.; Charles Harris, M.D.; and Harold P. Hope, M.D.,

Appellants.

O R D E R

Petitioner requests the Court to issue a writ of certiorari to review the decision of the Court of Appeals in Hume v. Durwood Medical Clinic, Inc., ___S.C.___, 318 S.E.2d 119 (Ct. App. 1984).

The Writ is granted.

The Appendix shall be docketed as the Transcript of Record as of the date of this order. Petitioner shall file eight additional copies of the Appendix by the deadline for filing the petitioner's

brief. The materials in the Appendix are not required to be certified copies. The parties are directed to file briefs in accordance with Rule 8 of the Rules of Practice of the Supreme Court, except only one original brief and nine copies shall be required. This matter shall proceed in conformity with the Court rules.

s/Bruce Littlejohn C.J.

_____ A.J.

s/G.T. Gregory, Jr. A.J.

_____ A.J.

s/A. Lee Chandler A.J.

Columbia, South Carolina

November 14, 1984

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Muriel C. Hume, Administratrix of the Estate of Donald E. Hume, Deceased, . . Respondent-Petitioner

v.

Durwood Medical Clinic, Inc.; James H. Black, M.D.;Charles Harris, M.D.; and Harold P. Hope, M.D., of which Durwood Medical Clinic,Inc.; James H. Black, M.D.; and Charles Harris, M.D., are, . . Appellants.

ON WRIT OF CERTIORARI

Appeal from Union County
Dan F. Laney, Jr., Judge

Opinion No. 22307
Writ Issued November 14, 1984
Submitted April 24, 1985
Filed May 1, 1985

DISMISSED

Charles L. Henshaw, Jr., and O. Fayrell Furr, Jr., both of Law Offices of O. Fayrell Furr, Jr., of Columbia, for Respondent-Petitioner.

Robert R. Carpenter, of Roddey, Carpenter & White, of Rock Hill, for Appellants.

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PER CURIAM: We granted certiorari to

review the decision of the Court of Appeals reported at 282 S.C. 236, 318 S.E.2d (S.C. App. 1984). After reviewing the transcript of record, briefs, and Court of Appeals opinion, we now conclude that certiorari was improvidently granted.

s/Bruce Littlejohn C.J.

s/J.B. Ness A.J.

s/G.T. Gregory, Jr. A.J.

s/David W. Harwell A.J.

s/A. Lee Chandler A.J.

STATE OF SOUTH CAROLINA	)	IN THE COURT
	)	OF COMMON
COUNTY OF UNION	)	PLEAS
MURIEL C. HUME, Administratrix of the Estate of Donald E. Hume Deceased,	)	
Plaintiff,	)	COMPLAINT
vs.	)	Survival Action
DURWOOD MEDICAL CLINIC, INC., JAMES H. BLACK, M.D., CHARLES HARRIS, M.D., and HAROLD P. HOPE, M.D.,	)	(Plaintiff Demands Jury Trial)
Defendants.	)	

The Plaintiff above-named, complaining of the Defendants would respectfully show unto the Court:

FOR A FIRST CAUSE OF ACTION

1. That the Plaintiff is a citizen and resident of the County of Union, State of South Carolina.

2. That the Plaintiff is duly appointed Administratrix of the Estate of Donald E. Hume, deceased and brings this

action pursuant to § 15-5-90 of the South Carolina Code of Laws (1976) for the statutory beneficiaries of Donald E. Hume.

3. That the Defendant Harold P. Hope (hereinafter referred to as "Hope") is a medical doctor licensed to practice medicine in the State of South Carolina and practices his profession in the County of Union.

4. That the Plaintiff is informed and believes that the Defendant Durwood Medical Clinic, Inc. (hereinafter referred to as "Clinic") is a corporation organized and existing under the laws of some state other than the State of South Carolina, and is engaged in the business of rendering medical care and treatment to persons in the corporate form.

5. That the Plaintiff is informed and believes that the Defendant Clinic enters

into contracts to render medical treatment to many individual citizens of the State of South Carolina, regularly accepts patients on a referral basis from physicians located and practicing medicine in the State of South Carolina, derives a substantial revenue from services rendered to the citizens of South Carolina and is therefore subject to the jurisdiction of this court pursuant to South Carolina Code § 36-2-803 (1976).

6. That the Plaintiff is informed and believes that Defendant James H. Black (hereinafter referred to as "Black") is a medical doctor licensed to practice medicine under the laws of some state other than the State of South Carolina; and that Defendant Black practices his profession, specializing in the field of Nephrology, in Charlotte, North Carolina, that he enters into contracts to render

medical treatment to many individual citizens of the State of South Carolina, regularly accepts patients on a referral basis from physicians located and practicing medicine in the state of South Carolina, derives a substantial revenue from services rendered to the citizens of South Carolina and is therefore subject to the jurisdiction of this Court pursuant to South Carolina Code § 36-2-803 (1976).

7. That the Plaintiff is informed and believes that Defendant Charles W. Harris (hereinafter referred to as "Harris") is a medical doctor licensed to practice medicine under the laws of some state other than the State of South Carolina; and that Defendant Harris practices his profession, specializing in the field of Cardiology, in Charlotte, North Carolina, that he enters into contracts to render

medical treatment to many individual citizens of the State of South Carolina, regularly accepts patients on a referral basis from physicians located and practicing medicine in the State of South Carolina, derives a substantial revenue from services rendered to the citizens of South Carolina and is therefore subject to the jurisdiction of this Court pursuant to South Carolina Code §36-2-803 (1976).

8. That Defendant Hope agreed to treat and did treat the Plaintiff's decedent over a period of years for various complaints, which included, but were not limited to the treatment of congestive heart failure and hypertension.

9. That over a period of years the Plaintiff's decedent was treated with numerous medications for the control of congestive heart failure and

hypertension, but that his condition persisted.

10. That on February 20, 1978, Plaintiff's decedent went to the office of Defendant Hope with complaints of chest pains and at that time the deceased's blood pressure reading was 182/104.

11. That Defendant Hope did not order hospitalization for Plaintiff's decedent on February 20, 1978, nor did he otherwise treat the complaints presented by the deceased.

12. That on February 25, 1978, the Plaintiff's decedent collapsed in his home and was pronounced dead soon after at the Wallace Thompson Hospital.

13. That the Plaintiff is informed and believes that an autopsy performed on the deceased revealed, among other findings: an occlusion of the right

renal artery; hypertrophy and infarcts, both old and recent, of the heart; and atrophy of the right kidney and hypertrophy of the left kidney.

14. That the Plaintiff is informed and believes that occlusions of the renal artery and resulting damage to the kidneys is a known cause of hypertension and/or a known cause of aggravation of a pre-existing hypertensive condition.

15. That Defendant Hope was negligent, reckless, willful and wanton in the rendering of medical care to the Plaintiff's decedent, which negligence was the proximate cause of injury to the decedent and losses and damages as are hereinafter set forth, such reckless negligence consisting of one or more of the following acts or omissions:

(a) Failing to hospitalize the Plaintiff's decedent on Febbruary 20, 1978, to determine the source, nature and

seriousness of the decedent's complaints of chest pains;

(b) Failing to perform or order to be performed examinations and diagnostic procedures to determine the underlying cause of and thereby render appropriate treatment for, Plaintiff's decedent's condition;

(c) Failing to adequately monitor the progress of the Plaintiff's decedent's hypertensive condition.

All of the above acts or omissions being done by Defendant Hope when he knew or should have known that the duty of care owed by him to the Plaintiff's decedent required him to act otherwise.

16. That as a direct and proximate result of the reckless, willful and wanton negligence of the Defendant Hope, as set forth above, Donald E. Hume suffered for a prolonged period of time

an undiagnosed condition that deteriorated his health and suffered much pain and suffering of both body and mind, all to his damage.

FOR A SECOND CAUSE OF ACTION

17. That the Plaintiff hereby incorporates Paragraphs 1, 2, 6, 9, 10, 12, 13 and 14 of her first cause of action as fully and completely as if set forth herein.

18. That Defendant Black agreed to treat and did treat the Plaintiff's decedent for a period of years to control his congestive heart failure and hypertensive condition.

19. That Defendant Black was negligent, reckless, willful and wanton in the rendering of medical care to the Plaintiff's decedent, which negligence was the proximate cause of injury to the decedent and losses and damages as are hereinafter set forth, such reckless

negligence consisting of one or more of the following acts or omissions:

(a) Failing to perform or order to be performed examinations and diagnostic procedures to determine the underlying cause of and thereby render appropriate treatment for Plaintiff's decedent's condition.

(b) Failing to rule out renal vascular disease as an etiology for the deceased's hypertension.

(c) Failing to treat the deceased's renal vascular disease.

(d) Failing to adequately monitor the progressive course of the Plaintiff's decedent's hypertensive condition.

All of the above acts or omissions being done by the Defendant Black when he knew or should have known that the duty of care owed by him to the Plaintiff's decedent, which was that of a medical

doctor with specialized knowledge of Nephrology, required him to act otherwise.

20. That as a direct and proximate result of the reckless, willful and wanton negligence of the Defendant Black, as set forth above, Donald E. Hume suffered for a prolonged period from an undiagnosed condition that deteriorated his health and suffered much pain and suffering of both body and mind, all to his damage.

FOR A THIRD CAUSE OF ACTION

21. That the Plaintiff hereby incorporates Paragraphs 1, 2, 7, 9, 10, 12, 13 and 14 of her first cause of action as fully and completely as if set forth herein.

22. That Defendant Harris agreed to treat and did treat the Plaintiff's decedent over a period of years to control his congestive heart failure and

hypertensive condition.

23. That Defendant Harris saw and examined Plaintiff's decedent on February 22, 1978, at which time the deceased complained of having had chest pains for the past few days.

24. That Defendant Harris did not hospitalize the Plaintiff's decedent on February 22, 1978, or otherwise render treatment for his complaints of chest pains.

25. That Defendant Harris was negligent, reckless, willful and wanton in his rendering of medical care to the Plaintiff's decedent, which negligence was the proximate cause of injury to the decedent and losses and damages as are hereinafter set forth, such reckless negligence consisting of one or more of the following acts or omissions:

(a) Failing to perform or order to be

performed examinations and diagnostic procedures to determine the underlying cause of and thereby render appropriate treatment for Plaintiff's decedent's condition.

(b) Failing to rule out renal vascular disease as an etiology for the deceased's hypertension.

(c) Failing to treat the deceased's renal vascular disease.

(d) Failing to hospitalize the deceased on February 22, 1978, for observation in light of his complaints of chest pain.

(e) Failing to adequately monitor the progressive course of the Plaintiff's decedent's hypertensive condition.

All of the above acts or omissions being done by the Defendant Harris when he knew or should have known that the duty of care owed by him to the Plaintiff's decedent, which was that of a medical

doctor with specialized knowledge of Cardiology, required him to act otherwise.

26. That as a direct and proximate result of the reckless, willful and wanton negligence of the Defendant Harris, as set forth above, Donald E. Hume suffered for a prolonged period from an undiagnosed condition that deteriorated his health and suffered much pain and suffering of both body and mind, all to his damage.

FOR A FOURTH CAUSE OF ACTION

27. That the Plaintiff hereby incorporates Paragraphs 1, 2, 4, 5, 9, 12, 13 and 14 of her first cause of action as fully and completely as if set forth herein.

28. That at all times herein mentioned the Defendant Clinic was acting by and through its duly authorized agents

and employees, Defendant Black and Defendant Harris, who in turn were acting within the course and scope of their agency and employment.

29. That both Defendant Black and Defendant Harris, agents of the Defendant Clinic, agreed to treat and did treat the Plaintiff's decedent, over a period of years, to control his congestive heart failure and hypertension.

30. That Defendant Clinic was negligent, reckless, willful and wanton in the rendering of medical care to the Plaintiff's decedent, which negligence was the proximate cause of injury to the decedent and losses and damages as are hereinafter set forth, such reckless negligence consisting of one or more of the following acts or omissions:

(a) Failing to perform or order to be performed examinations and diagnostic procedures to determine the underlying

cause of and thereby render appropriate treatment for Plaintiff's decedent's condition;

(b) Failing to rule out renal vascular disease as an etiology for the deceased's hypertension.

(c) Failing to treat the deceased's renal vascular disease.

(d) Failing to hospitalize the deceased on February 22, 1978, for observation in light of his complaints of chest pain.

(e) Failing to adequately monitor the progressive course of the Plaintiff's decedent's hypertensive condition.

All of the above acts or omissions being done by the Defendant clinic when it knew or should have known that the duty it owed to the Plaintiff's decedent, being that of a provider of medical servics to the public in corporate form, required it

to act otherwise.

31. That as a direct and proximate result of the reckless, willful and wanton negligence of the Defendant Clinic, as set forth above, Donald E. Hume suffered for a prolonged period from an undiagnosed condition that deteriorated his health and suffered much pain and suffering of both body and mind, all to his damage.

WHEREFORE, the Plaintiff demands judgment against the above-named Defendants, jointly and severally, in the amount of Five Hundred Thousand and No/100 ($500,000.00) Dollars, for both actual and punitive damages.

LAW OFFICES OF O. FAYRELL FURR, JR.

By: s/
O. FAYRELL FURR, JR.
1534 Blanding Street
Columbia, S. C. 29201
(803) 252-4050

ATTORNEY FOR PLAINTIFF

Columbia, South Carolina

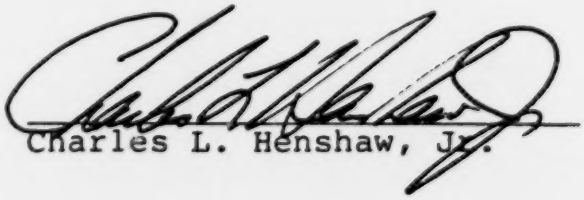
25 day of February, 1981.

CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that he is an attorney at law licensed to practice in the State of South Carolina and is admitted to practice in the Supreme Court of the United States and is attorney for the Petitioner.

That on July 26, 1985, he served three copies of the attached Petition for Writ of Certiorari by placing said copies in a postpaid envelope addressed to the persons hereinafter named by depositing said envelope and its contents in the United States Mail.

Robert R. Carpenter
Benjamin A. Johnson
RODDEY, CARPENTER & WHITE, P.A.
P.O. Drawer 551, CSS
Rock Hill, South Carolina 29730
ATTORNEYS FOR RESPONDENTS



Charles L. Henshaw, Jr.

Supreme Court, U.S.
FILED
SEP 11 1985
JOSEPH F. SPANIOL, JR.
CLERK

85-160

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1985

Muriel C. Hume, Administratrix
of the Estate of Donald E. Hume

Petitioner,

v.

Durwood Medical Clinic, Inc.;
James H. Black; and Charles Harris,

Respondents.

On Writ of Certiorari to the Court
of Appeals of South Carolina

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Benjamin A. Johnson, Robert R. Carpenter of Roddey, Carpenter & White, P.A., P.O. Drawer 560, Rock Hill, South Carolina 29731-6560, 803-324-4500, for Respondents.

Charles L. Henshaw, Jr., O. Fayrell Furr, Jr., of the Law Offices of O. Fayrell Furr, Jr., P.A., 1534 Blanding Street, Columbia, South Carolina 29201, 803-252-4050, for Petitioner.

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QUESTION PRESENTED

(RESTATED)

Whether tne South Carolina Courts can, consistently with the due process requirements of the Fourteenth Amendment, exercise long-arm jurisdiction over a North Carolina Medical clinic and two North Carolina doctors in a lawsuit arising from medical services provided to a South Carolina resident at the doctors' offices in North Carolina?

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OPINION BELOW

The decision of the South Carolina Court of Appeals is reported at 282 S.C. 236, 318 S.E. 2d 119 (1984), cert dismissed, ___ S.C. ___, 329 S.E. 2d 443 (1985).

JURISDICTION

Petitioner invokes the jurisdiction of the Supreme Court of the United States by reason of 28 USC Section 1257(3) on grounds that final judgment has been rendered by the highest court of South Carolina in a case in which Respondents have contested personal jurisdiction pursuant to their due process rights under the Fourteenth Amendment. 28 USC Section 1257(3) provides that a decision may be reviewed by the Supreme Court on certiorari where the validity of a State statute is drawn in

question on the ground of its being repugnant to the Constitution of the United States. Respondents nave not contested the validity of the South Carolina long-arm statute. The South Carolina Court of Appeals has held that the conduct of Respondents falls within the long-arm statute, but that the statute could not be applied, consistently with due process, to allow the South Carolina Courts to exercise jurisdiction over Respondents. Certiorari should not be granted under 28 USC Section 1257(3) in a case where the decision of the highest court of the State is that the State statute cannot be applied consistently with the federal Constitution.

STATEMENT OF THE CASE

Petitioner has already recited the

opinions below, procedural history of the case, and applicable provisions of law. In addition, the South Carolina Court of Appeals summarized the pertinent jurisdictional facts at Petition, A-3 to A-6.

The trial court and the South Carolina Court of Appeals found that the Petitioner's pleadings and proof brought the conduct of Respondents within the scope of S.C. Code Ann. Section 36-2-803(1)(c) (1976) which provides: "(1) A court may exercise personal jurisdiction over a person who acts directly or by an agent as to the cause of action arising from the person's . . . (c) commission of a tortious act in whole or in part in this State." This section has been held by the South Carolina Supreme Court to apply "where in-state injurious conse-

quences resulted from out-of-state wrongful acts or omissions." Parker v. Williams & Madjanik, Inc., 270 S.C. 570, 243 S.E. 2d 451, 454 (1978). The South Carolina Court of Appeals reviewed the cases from other jurisdictions, Wrignt v. Yackley, 459 F. 2d 287 (9th Cir. 1972) and its progeny, "that have rejected the view that the tortious rendition of medical services out of the forum state is a portable tort which can be deemed to have been committed wherever the consequences forseeably were felt" (Petition, A-12) but nevertneless found that Petitioner had shown "by the barest of facts that (Respondents') conduct falls within the requirements of our long-arm statute." (Petition, A-15). But the South Carolina Court of Appeals went on to hold:

"We do not agree, however, that the trial court's exercise of jurisdiction under the facts of this case is consonant with due process. The test of 'minimal contacts' announced in International Shoe Co. v. State of Washington, 326 U.S. 310 (1945), requires that this State's exercise of jurisdiction not offend traditional notions of fair play and substantial justice." (Petition, A-15).

SUMMARY OF ARGUMENT

The Supreme Court of the United States should deny the Petition for Writ of Certiorari because the South Carolina Court of Appeals correctly applied prior decisions of the Supreme Court of the United States, setting forth standards for in personam jurisdiction, to the particular facts of this case. The South Carolina Court of

appeals correctly applied the "minimum contacts" test of International Shoe Co., supra. and its progeny to refuse to allow South Carolina courts to exercise jurisdiction over Respondents. The South Carolina Court of Appeals did not apply a separate test for due process because Respondents provided medical services; but, rather, it considered the facts and the quality and nature of the Respondents' activities in the forum state to determine whether the minimum contacts requirement had been met. Hanson v. Denckla, 357 U.S. 235 (1975); Kulko v. Superior Court, 436 U.S.84 (1978).

The cases cited by Petitioner in support of its argument for certiorari, decisions of the Ninth Circuit Court of Appeals and the Supreme Court of Appeals of West Virginia, are distin-

guishable and therefore are not inconsistent with the holding of this case. The cases relied on by Petitioner involved solicitation in the forum state by the non-resident defendants, and one case, Cubbage v. Merchent, 744 F.2d 665 (9th Cir. 1984), involved their participation in the forum's State Healthcare Program. Wolf v. Richmond County Hospital Authority, 745 F.2d 904 (4th Cir. 1984).

Petitioner's claim does not arise out of Respondent's activities in South Carolina; and it is clear that Respondent's do not provide medical services to Soutn Carolina residents on a systematic basis. (Petition, A-17 to A-18)

That Soutn Carolina might have an interest in providing its residents with redress against treating physicians as evidenced by tne standards

established by its negligence laws has no bearing on the issue of whether the minimum contacts requirement has been met. Further, even if the forum state is the most convenient place for litigation, "the due process clause, acting as an instrument of interstate federalism, may sometimes act to divest the state of its power to render a valid judgment." Worldwide Volkswagen Corp. v. Woodson, 444 U.S.286, 294 (1980).

ARGUMENT

A. Consistency with Prior Decisions of United States Supreme Court

The first point of Petitioner is that "the South Carolina Court of Appeals by its decision in this case holds that due process analysis for medical services is 'quite different' from that 'involving other commercial activity.'" (Petition, p.19). Peti-

tioner argues that no decision has been forthcoming from the United States Supreme Court to suggest that Defendants providing personal services shall be treated differently for jurisdictional purposes than Defendants engaged in other forms of interstate commerce.

Jurisdictional inquiry must be made on the facts of each case. The standards for determining whether the minimum contacts requirement has been met are the same for medical services as for all other forms of interstate activity. The decision of the South Carolina Court of Appeals in this case is consistent with the long line of decisions by the United States Supreme Court setting standards for determining when the "minimum contacts" test has been met.

Respondents are neither actual residents of South Carolina nor deemed to be so by reason of repeated contacts with the state under the International Shoe test. Therefore, "in personam jurisdiction, if it is found to exist at all, must be based upon the McGee rationale. That is, the suit at bar must be related to a transaction which itself has sufficient contact with the forum state, so that it is not unfair to require the Respondents to appear in the forum to defend the manner in which they conducted the transaction." Gelineau v. New York University Hospital, 375 F. Supp. 661, 666 (D.N.J. 1974). Respondents' specific contacts with the state of South Carolina, if any, do not constitute the "minimum contacts" required to confer personal jurisdiction over them by the South

Carolina courts consistently with due process.

McGee v. International Life Insurance Company, 355 U.S. 220 (1957), did not extinguish all restrictions on in personam jurisdiction of state courts.

The Supreme Court has reiterated the need for fundamental fairness when a state subjects a non-resident to the jurisdiction of its courts. As Chief Justice Warren warned in Hanson v. Denckla, supra:

> (B)ut it is a mistake to assume that this trend heralds the eventual demise of all restrictions on the personal jurisdiction of state courts . . . . Those restrictions are more than a guarantee of immunity from inconvenient or distant litigation. They are a consequence of territorial limitations on the power of the respective states. However minimal the burden of defending in a foreign tribunal, a defendant may not be called upon to do so unless he has had the 'minimal contacts' with that state that are a prerequisite to its exercise of power over him.

357 U.S. at 251. Assuming, arguendo, that the alleged tort was completed in the forum state, that, in itself, is insufficient. The minimum contacts requirement must be met. Hanson v. Denckla, supra., states:

> The unilateral activity of those who claim some relationship with the non-resident defendant cannot satisfy the requirement of contact with the forum state. The application of that rule will vary with the quality and nature of the defendant's activity, but it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protection of its laws.

357 U.S. at 253 (emphasis added); Du-Al Corp v. Randolph Beaver, Inc., 540 F. 2d 1230 (4th Cir. 1976).

Respondents have not purposefully availed themselves of the privilege of conducting activities within South Carolina. Hanson v. Denckla, supra.

"The Courts . . . must . . . give content to the requirements expressed in Hanson: that the Defendant's contacts with the forum be voluntary in some meaningful sense." Vencedor Mfg. Co. Inc. v. Gougler Industries, 557 F. 2d 886, 891 (1st Cir. 1977). The medical services that Respondents provided to the Petitioner's decedent were performed in North Carolina at the request of Petitioner's decedent who traveled to North Carolina to receive them. The residence of the Petitioner's decedent was, and is now, irrelevant to the services provided by Respondents at their offices.

As pointed out by the United States Supreme Court in Kulko v. Superior Court of California in and for the City of the County of San Francisco, 436 U.S. 84 (1978), not all cases can be

viewed as cases involving a defendant who has commercial activities ongoing in a particular state. Here, the decedent's first contact with the Respondents in this case came following the referral by his local physician; the Respondents requested that the decedent travel to North Carolina for evaluation; the decedent was examined and returned to the care of the referring physician with instructions from the Respondents. The Respondents sent copies of their findings to the local physician for his files and for further reference. This type of activity must be distinguished from the commercial activity discussed in McGee and Parker. As stated in Gelineau v. New York University Hospital:

> Unlike a case involving voluntary interstate or international economic activity . . . the residence of a recipient of personal services

> rendered elsewhere is irrelevant and totally incidental to the benefits provided by the defendant at his own location. It is clear that when a client or a patient travels to receive professional services without having been solicited . . . then the client, who originally traveled to seek services apparently not available at home, ought to expect that he will nave to travel again if he thereafter complains that the services sought by him in the foreign jurisdiction were therein rendered improperly.

375 F. Supp. at 667. This case does not involve a defendant who has introduced a defective product into the stream of commerce. Neither is it one involving an act performed for the purpose of causing an effect in South Carolina. In those cases, personal jurisdiction nas been upheld, and with good reason. In a products case, the manufacturer knows that the product, traveling through interstate commerce, will ultimately reach a consumer in any state of the United States. The manu-

facturer derives revenue from sales in the foreign forum. The manufacturer has performed "some act by which he has purposefully availed himself of the privilege of conducting activities within the forum state, thus invoking tne benefits and protection of its laws." Hanson v. Denckla, 357 U.S. at 253.

The Supreme Court nas recently characterized the test to be applied when a Plaintiff's claim does not arise out of a Defendant's activities in the forum state as whether the contacts are of a "continuous and systematic" nature. Helicopteros Nacionales de Colombia, S.A. v. Hall, __ U.S. __ 104 S.Ct. 1868, 80 L.Ed. 2d 404 (1984); Wolf v. Richmond County Hospital Authority, supra. Because this case does not arise out of Respondents'

activities in the forum state, the South Carolina Court of Appeals went on to correctly hold that:

"We do not glean from the conduct of the Appellants an intent on their part to purposefully avail themselves of the privilege of providing medical services to South Carolina residents on a systematic basis . . . . By providing services to Hume, the Appellants were merely fulfilling their professional responsibilities to provide medical services to a patient in need, and should not by doing so automatically subject themselves to the jurisdiction of the Courts of this state." (Petition, A-17 to A-18).

B. Decision not in conflict with Decisions of Courts from other States of Federal Courts of Appeals

In Wolf v. Richmond County Hospital Authority, 745 F. 2d 904 (4th Cir. 1984), an action similar to the case at bar, the Fourth Circuit Court of Appeals applied the decision of the South Carolina Court of Appeals in this case and reversed the District Court's ruling that South Carolina had jurisdiction over an Augusta, Georgia hospital. After reviewing and approving of the decision of the South Carolina Court of Appeals in this case, the Fourth Circuit Court of Appeals went on to distinguish cases cited by the Plaintiffs, which are the same cases cited by Petitioner herein: Cubbage v. Merchent, 744 F. 2d 665 (9th Cir. 1984), cert. denied, 105 S.Ct. 1359, and S.R. v. City of Fairmont, 280 S.E. 2d 712 (W. Va. 1981). In Wolf, the Fourth Circuit Court of Appeals held:

> The cases relied on by the Wolfs in which doctors or medical facilities were found to be subject to the jurisdiction of a foreign court are distinguishable because, in these cases, the defendant either actively solicited or encouraged the non-resident to travel to their facility for treatment or had patient referral or transfer contacts. Cubbage v. Merchent, supra. (defendant physicians applied for and received Medi-Cal numbers in order to receive reimbursement from forum state for services rendered to eligible residents of forum state; defendant hospital took out a paid advertisement in yellow pages of telephone directory distributed in forum state); . . . S.R. v. City of Fairmont, 280 S.E. 2d 712 (W.Va. 198) (defendant medical corporation found to derive a direct economic benefit from solicitation made by an abortion clinic in defendant's home state for abortion business from forum state).

745 F. 2d at 912. (emphasis added).

Thus, in Cubbage v. Merchent, supra, the non-resident doctors purposefully took some action by which they invoked the benefits and protection of California law when they applied for a Medi-Cal number, which

would entitle them to receive reimbursement from the State of California for services rendered to eligible residents of that forum state. The Plaintiff's claim arose out of or resulted from the non-resident's forum related activities - participation in the state Health Care Program and phone directory (yellow pages) solicitation. Also, in S.R. v. City of Fairmont, supra, the Supreme Court of Appeals of West Virginia was deciding a certified question as to the correctness of the Circuit Court's dismissal of the non-resident medical corporation for lack of personal jurisdiction. The Supreme Court of Appeals held that the Plaintiff should be entitled to pursue additional discovery against said Defendant to develop its involvement and knowledge with the solicitation of

abortions by the resident medical center "and such other facts that may bear on its contacts with this State." 280 S.E. 2d at 718.

In the cases relied on by Petitioner, the claims indeed arose out of purposeful, voluntary, interstate economic activity directed at the forum state in order to benefit from the effects sought there. But here, Respondents solicit no business and do no business in South Carolina. In the case of unsolicited personal services, such as those of the physicians in the instant case, "the nature of the contacts is normally grounded outside of any relationship within the forum state. . . . (T)he residence of a recipient in the forum state is irrelevant and incidental to the benefits provided by the Respondents in their

location." Wright v. Yackley, 459 F. 2d 287, 289-290.

"It is a defendant's contacts with the forum state that are of interest in determining if in personam jurisdiction exists, not its contacts with a resident." Aaron Ferer & Sons Co. v. Atlas Scrap Iron, 558 F. 2d 450, 455, n. 6 (8th Cir. 1977), as cited in Glover v. Wagner, 462 F. Supp. 308, 311 (D. Neb. 1978).

Jurisdictional inquiry must be made on the facts of each case. The standards for determining whether the minimum contacts requirement has been met are the same for medical services as for all other forms of interstate activity. However, "the application of that rule will vary with the quality and nature of the Defendant's activity" and in each case it is essential that

"there be some act by which the Defendant purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protection of its laws." Hanson, 357 U.S. at 253. Indeed, if a medical center or doctor engages in purposeful, voluntary, interstate practice, then jurisdiction has and should be upheld, and for good reason. E.g., Cubbage v. Merchent, supra; Lemke v. St. Margaret's Hospital, 552 F. Supp. 833 (N.D. Ill. 1982). But in this case, Respondents have not purposefully availed themselves of the privilege of conducting activities within South Carolina.

C. Interest of Forum State, Convenience

Petitioner seeks to establish that South Carolina has an interest in pro-

viding its residents with redress against treating physicians as indicated by the standards established by its negligence laws. While the general proposition of providing for redress under its laws for its residents is a valid interest for all states, Respondents wish to point out that "(t)he interest analysis that is often applied to choice of law problems will not always supply answers to this jurisdictional question." Vencedor, supra., 557 F. 2d at 890. The United States Supreme Court has consistently differentiated factors which affect the choice of substantive law applicable to a controversy from those which permit a court to exercise personal jurisdiction over a non-resident. In Hanson v. Denckla, supra., the court expressly

separated choice of law from jurisdictional rules:

> * * * It does not acquire that jurisdiction by being the 'center of gravity' of the controversy, or the most convenient location for litigation. The issue is personal jurisdiction, not choice by law. It is resolved in this case by considering the acts of the Trustee. 357 U.S. at 254 (emphasis added).

See also Shaffer v. Heitner, 433 U.S. 186, 215, 97 S.Ct. 2569, 2586, 53 L.Ed. 2d 683 (1977); Kulko v. Superior Court of California, 436 U.S. 84, 98, 98 S.Ct. 1690, 1700, 56 L.Ed. 2d 132 (1978).

That South Carolina may have an interest in providing a forum for its residents to seek redress against treating physicians, or that it may be more convenient for Petitioner to litigate in South Carolina, is not determinative. Those are only two elements to be considered, and the absence of

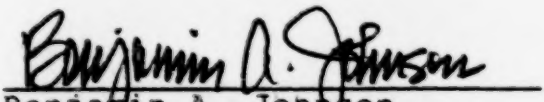
minimum contacts between Respondents and South Carolina precludes the assertion of jurisdiction by the courts of that State. "Even if the defendant would suffer minimal or no inconveniences from being forced to litigate before the tribunals of another state; even if the forum state has a strong interest in applying its law to the controversy; even if the forum state is the most convenient location for litigation, the due process clause, acting as an instrument of interstate federalism, may sometimes act to divest the state of its power to render a valid judgment." World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 294 (1980), citing Hanson v. Denckla, 357 U.S. 235 (1958).

CONCLUSION

The Supreme Court of the United

States should deny the Petition for Writ of Certiorari because the decisions of the Ninth Circuit Court of Appeals and the Supreme Court of Appeals of West Virginia, relied upon by Petitioner, are distinguisnable and are not inconsistent with the holding of this case, and because the decision of the South Carolina Court of Appeals correctly applied prior decisions of the Supreme Court of the United States, setting forth standards for *in personam* jurisdiction, to the particular facts of this case.

RESPECTFULLY SUBMITTED,



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